Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

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The United States Telecom Association (USTA)[1] submits its comments through the undersigned in response to the Federal Communications Commission's (FCC's or Commission's) Public Notice,[2] in which the Federal-State Joint Board on Universal Service (Joint Board) seeks comment on issues referred to it by the Commission, "relating to the high-cost universal support mechanisms for rural carriers and the appropriate rural mechanism to succeed the five-year plan adopted in the *Rural Task Force Order*."[3]

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[1] USTA is the nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data, and video services over wireline and wireless networks.

[2] *See* Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, FCC 04J-2 (rel. Aug. 16, 2004) (Public Notice).

[3] Public Notice, ¶1. *See also Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, FCC 04-125 (rel. June 28, 2004) (Referral Order) (*citing Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (2001) (Rural Task Force Order), as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. June 1, 2001)).

INTRODUCTION AND SUMMARY

With a little more than a year and a half prior to the end of the five-year plan adopted in the Rural Task Force Order[4] regarding high-cost universal service support mechanisms established for rural carriers, the Joint Board has undertaken "a review of what measures should succeed the Rural Task Force (RTF) plan and how the rural and non-rural high-cost support mechanisms should function together."[5] Among other things, the Joint Board specifically seeks comment on "whether the Commission should continue to use the statutory definition of 'rural telephone company' to determine which carriers are rural carriers for high-cost universal service purposes;"[6] "whether the Commission should consider holding company size, as well as study area size, when identifying companies that generally do not benefit as much from economies of scale and scope as the large non-rural companies;"[7] "whether forward-looking economic cost estimates, embedded costs, or some other method of determining costs should be used for rural carriers . . . and what method of determining costs should be used for competitive eligible

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[4] The five-year plan commenced on July 1, 2001, and is scheduled to run through June 30, 2006. USTA notes that when the Commission adopted the Rural Task Force Order, it did not establish that the provisions in the Order would automatically expire at the end of the specified five-year period.

[5] Public Notice, ¶6 (*citing* Referral Order, ¶7). While a year and a half may seem like a sufficient amount of time to conduct the task at hand, the Joint Board and Commission should be mindful that when these issues were contemplated several years ago, culminating in the Rural Task Force Order, it took the Rural Task Force more than two years – from 1998 to 2000 – to make its recommendations and then it took another eight months for those recommendations to be incorporated into the FCC's Rural Task Force Order in 2001.

[6] Public Notice, ¶7.

[7] *Id*. ¶13.

telecommunications carriers (ETCs);"[8] and "whether the Commission should retain, repeal, or further modify section 54.305 of its rules."[9]

USTA urges the Joint Board to refrain from making recommendations to the Commission that would change the current system of providing high-cost support to rural carriers, with the exception of two problem areas. USTA agrees wholeheartedly with the sentiment expressed by the former FCC Chairman William E. Kennard when he spoke to the United States Telephone Association in April 1998, that "[w]hen it comes to our country's smaller, rural telephone companies – companies that serve one-third of the nation's geography but only about 5% of the population – if it ain't broke, don't fix it."[10] The current system of providing high-cost support to rural carriers is not necessarily broken. Yet, certain items under consideration by the Joint Board for recommendation to the Commission involve proposals that seemingly attempt to move the provision of high-cost support into a one-size-fits-all approach through efforts that would unify the rural and non-rural support systems, or at least efforts that would bring the operation of the two systems closer together. Notably, considerations to base the rural system of support on forward-looking economic costs or some other cost methodology other than embedded costs and to consolidate the study areas of a company that has multiple study areas for purposes of providing support are two such efforts. Such considerations are plainly contradictory to the intention of Congress when it enacted the Telecommunications Act of 1996 (1996 Act) to address the unique conditions under which rural carriers operate. Several provisions of the 1996

[8] *Id*. ¶18.

[9] *Id*. ¶¶48-49.

[10] Rural Task Force White Paper 1, "Rural Task Force Mission and Purpose," at p. 5, September 1999, http://www.wutc.wa.gov/rtf (White Paper 1).

Act,[11] but particularly the universal service provisions, treat rural carriers distinctly from other carriers, codifying Congress' recognition of the different conditions confronting small, rural, and isolated carriers serving predominantly widely dispersed populations.[12]

The Rural Task Force's conclusion in 2000 still holds true today – "[t]o be successful, policies and mechanisms ultimately adopted must be flexible enough to accommodate a wide range of market and operational circumstances faced by telecommunications carriers serving rural populations."[13] The current system of support for rural carriers admittedly differs from the system applied to non-rural carriers, but that is because the Commission determined, rightfully so, in 2001 that "rural carriers face diverse circumstances and that 'one size *does not* fit all'" with regard to universal service support mechanisms that are appropriate for rural carriers.[14] Accordingly, the Commission adopted a modified embedded cost mechanism for rural carriers for a five-year period, but noted that it intended "to develop over the next few years a long-term universal service plan for rural carriers that is better coordinated with the non-rural mechanism" and specifically "to develop a long-term plan that better targets support to carriers serving high-cost areas, while at the same time recognizing the significant differences among rural carriers, and between rural and non-rural carriers."[15]

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[11] For example, see sections 214(e), 251(f), 253(f), and 254 of the 1996 Act. *See also Federal-State Joint Board on Universal Service*, Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service, CC Docket No. 96-45, at 9 (rel. Sept. 29, 2000) (Rural Task Force Report).

[12] *See* White Paper 1 at 12.

[13] Rural Task Force White Paper 2, "The Rural Difference," at p. 14, January 2000, http://www.wutc.wa.gov/rtf, (White Paper 2).

[14] Rural Task Force Order, ¶4 (emphasis added).

[15] *Id*. ¶8.

Although the Commission stated in the Rural Task Force Order that it intended "to refer these issues [coordination of the rural and non-rural mechanisms and development of a long-term plan] to the Joint Board no later than January 1, 2002,"[16] it did not actually make such a referral until June 28, 2004, and the Joint Board did not seek comment on the issues in the referral until August 16, 2004, with all comments and reply comments due to the Joint Board by December 14, 2004.[17] Keeping in mind that it took several years to develop and adopt the current plan that provides support to rural carriers based on a modified embedded cost mechanism, USTA suggests that more than a few mere months is necessary to attempt the efforts undertaken by the Commission and Joint Board. Importantly, even though the Rural Task Force Order was established for a five-year period, the provisions of the Order do not automatically expire on June 20, 2006. USTA notes that there is no deadline for making any changes to the provisions in the Rural Task Force Order, but more importantly, there is no need to change the current rural support mechanism, which already works well and accomplishes its purpose – to provide support to carriers, which will ensure consumers in rural areas have access to services and rates that are comparable to those available in urban areas.[18]

Again, USTA urges the Joint Board to recommend to the Commission that, with the exception of two problem areas, there should be no changes to the current system of providing high-cost support to rural carriers. Rather, USTA maintains that the Joint Board and Commission should be focusing on the matters that are significantly impacting the

[16] *Id.*, ¶168.

[17] *See generally* Referral Order and Public Notice.

[18] Importantly, the Joint Board and Commission should recognize that this support to rural carriers is necessary for them to be able to build, maintain, and improve the networks over which today's services ride and over which the services of the future will ride.

telecommunications industry today – namely, problems with ETC designations, contributions to the Universal Service Fund (USF or Fund), and intercarrier compensation, all of which should be addressed holistically, rather than separately as is currently the case. USTA reiterates that with the exception of a few problems areas, particularly the issue of high-cost universal service support applicable to acquired exchanges, the current system of support to rural carriers is not broken. Accordingly, USTA urges the Joint Board to recommend that the Commission retain the current definition of a rural telephone company; that the Commission not consolidate multiple study areas operated by a carrier; that the Commission retain the use of embedded costs as the basis of support; and that the Commission repeal, or at a minimum revise its rule section 54.305 addressing support for acquired exchanges. USTA will address these matters in more detail below.

DISCUSSION

I. The FCC Should Retain The Current Definition Of A Rural Telephone Company.

The Joint Board should not recommend making any change to the current definition of a rural telephone company, which is used to determine which carriers are rural carriers for receipt of high-cost universal service support. The Commission, in asking the Joint Board to revisit the definition of a rural telephone company, couched its request in conjunction with the Joint Board's consideration of "whether maintaining a different support mechanism for rural carriers best serves the goals of the Act."[19] The Commission provides greater detail on the basis for this request, suggesting that the Joint Board consider whether forward-looking economic costs might be appropriate for some subset of rural telephone companies and implying that some rural telephone companies that are operating subsidiaries of larger holding companies should not

[19] Referral Order, ¶11.

receive the same level of support as rural telephone companies that do not have affiliated companies.[20] USTA urges the Joint Board to make no recommendation to change the definition of rural telephone company, particularly if the only purpose is – as it appears is the Commission's only rationale for a definitional change – to attempt to reduce the size of the Fund. Importantly, one of the many requirements of the Fund is to ensure that there is sufficient support to preserve and advance universal service.[21] Yet, this inquiry about changing the definition of a rural telephone company with the apparent hope of reducing the size of the Fund is more likely to put many carriers at risk of not receiving sufficient support to be able to provide universal service than it is to make any worthwhile reduction in the size of the Fund.[22] USTA believes the Joint Board and Commission are wasting their time and resources seeking comment on a definition that already works well and does not pose any problems for distribution of high-cost support. USTA also submits that realistically there is no need for finer distinctions among carriers of different sizes or characteristics because the various distribution mechanisms of high-cost support – for example, local switching support – already take into account smaller, more granular, measurements than the statutory definition of rural for distributions of high-cost funds to rural carriers.

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[20] *Id*.

[21] *See* 47 U.S.C. §254(b)(4).

[22] USTA maintains, as it has in comments to the Commission on the Joint Board's recommendation regarding the ETC designation process, that the growth of the Universal Service Fund must be controlled by strengthening the requirements for designating a carrier as an ETC and by making such requirements mandatory. *See generally Federal-State Joint Board on Universal Service*, Comments of the United States Telecom Association, CC Docket No. 96-45 (Aug. 6, 2004) and *Federal-State Joint Board on Universal Service*, Reply Comments of the United States Telecom Association, CC Docket No. 96-45 (Sept. 21, 2004).

II. The FCC Should Not Consolidate Multiple Study Areas Operated By A Carrier.

The Commission asks the Joint Board to consider whether consolidation of study areas, when a company has more than one study area within a state, would better reflect the appropriate economies of scale of the service provider.[23] This statement actually starts from the unsupported conclusion that companies with multiple study areas in a state actually do have economies of scale. In addition, when the Commission stated that "[b]y operating multiple study areas in a given state, certain carriers may receive more high-cost universal service support that they would if their study areas within the state were combined,"[24] it implies that such carriers are receiving more universal service support than they actually require. These assumptions and implications are simply not correct. Generally, when a carrier has multiple study areas within a state, the study areas are not geographically contiguous and the operations for providing service in each study area are separate from each other study area in the state. In other words, even though a carrier may have an overall large number of lines in a state, which may make the carrier look more like a non-rural carrier on paper, there really are no, or very limited, economies of scale realized when the lines are spread out in geographically diverse and usually non-contiguous areas of a state and the carrier must operate each of its study areas independently. The Commission suggests that the Joint Board should consider whether to "modify the definition of 'study area' to limit a holding company to one study area per state."[25] However, the fact that multiple study areas roll up under a holding company does not change the independent nature of these study areas or their diverse operating demands. While there are some advantages to

[23] *See* Referral Order, ¶12.

[24] *Id*.

[25] *Id*.

establishing a corporate structure with a holding company over affiliated companies that operate one or more study areas (e.g., limiting personnel expenses for regulatory matters to one or two people versus one person for every study area or every state), these advantages do not alter the most significant operational expenses for which universal service support is needed. USTA maintains that the support that carriers with multiple study areas receive is needed to sufficiently operate their networks and provide service. As noted with the issue of changing the definition of a rural telephone company, USTA similarly notes here that carriers' use of multiple study areas already works well and does not pose any problems for distribution of high-cost support. Accordingly, USTA urges the Joint Board not to recommend consolidation of study areas.

III. The FCC Should Retain The Use Of Embedded Costs As The Basis Of Support.

USTA urges the Joint Board to recommend the continued use of embedded costs as the basis of support for rural carriers operating in high-cost areas and the continued use of incumbent local exchange carrier (ILEC) costs as the basis of support for CETCs. As USTA has commented previously to the Joint Board on the matter of ETC designations, using ILECs' embedded costs as the basis of support for both ILECs and CETCs is time-tested method proven to ensure ubiquitous service in rural areas where alternative methods are untested and have unknown results.[26]

USTA agrees with the August 2000 findings of the Rural Task Force in its White Paper 3 that the current mechanism of support based on embedded costs has a record of successful performance; that it is relatively easy to administer; that it provides incentives to invest; and that support provided under this mechanism is based on "real world" costs incurred in providing

[26] *See Federal-State Joint Board on Universal Service*, Comments of the United States Telecom Association, CC Docket No. 96-45, at 7 (May 5, 2003).

services.[27] However, since the Commission has asked the Joint Board "to consider whether a universal service mechanism for rural carriers based on forward-looking economic cost estimates or embedded costs would most efficiently and effectively achieve the Act's goals,"[28] USTA will address points the Commission and Joint Board should consider with regard to the possibility of using forward-looking costs models for rural carriers operating in high-cost areas.

In assessing the viability of using forward-looking cost models for the determination of High Cost Loop (HCL) universal service support, the Commission and Joint Board should carefully review the analysis performed by the Rural Task Force of the FCC's Synthesis Model as documented in the Rural Task Force's White Paper 4.[29] The Rural Task Force devoted extensive resources to reviewing the Synthesis Model in relationship to the results it produces for rural companies and documented that analysis in White Paper 4. The analysis includes the development of a set of criteria contained in Appendix B of White Paper 4, which provides the basis that the Rural Task Force used in evaluating the Synthesis Model and its results and the documentation of the results of the analysis against those criteria. Based on its substantial evaluation of the Synthesis Model using these criteria, the Rural Task Force concluded:

> The aggregate results of this study suggest that, when viewed on an individual rural wire center or individual Rural Carrier basis, the costs generated by the Synthesis Model are likely to vary widely from reasonable estimates of forward-looking costs. In fact, much of the data analysis suggests that the model results tend to be in the high and low extremes, rather than near the expected results for the area being analyzed. While it may be technically possible to construct a model with added precision and variables to

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[27] Rural Task Force White Paper 3, "Alternative Mechanisms for Sizing A Universal Service Fund for Rural Telephone Companies," at 10, August 2000, http://www.wutc.wa.gov/rtf (White Paper 3).

[28] Referral Order, ¶8.

[29] *See* Rural Task Force White Paper 4, , "A Review of the FCC's Non-Rural Universal Service Fund Method and the Synthesis Model for Rural Telephone Companies," September 2000, http://www.wutc.wa.gov/rtf (White Paper 4).

> account for the differences among Rural Carriers and between non-Rural Carriers and Rural Carriers, it is the opinion of the Task Force that the current model is not an appropriate tool for determining the forward-looking cost of Rural Carriers.[30]

In evaluating the conclusion of the Rural Task Force with regard to the Synthesis Model today, it is imperative that the Commission and Joint Board consider what has changed since the Rural Task Force provided its conclusion and whether such changes, if they existed, would cause the Rural Task Force to alter its conclusion. USTA maintains that a review of the current version of the Synthesis Model in relation to the version that the Rural Task Force evaluated reveals that, with regard to the model itself, very little has changed in the ensuing years.[31] While there have been minor modifications to the Synthesis Model since the Rural Task Force issued its conclusions, there has been no substantive review or modification to the model to address the wide variety of concerns documented by the Rural Task Force in its Report.[32] No effort has been made to modify inputs or to add to the flexibility of the Synthesis Model to address the substantial concerns identified by the Rural Task Force. USTA believes it is reasonable to assume that even if such modifications and additions were made and another analysis was conducted today, similar concerns regarding the validity of the Synthesis Model as a tool for estimating forward-looking costs would be equally apparent.

In addition to the Rural Task Force's concerns with the Synthesis Model, which likely would not change, there are now additional factors that would call into question the validity of the current version and its inputs as a forward-looking cost tool. Specifically, there are a number of external factors that have changed and that continue to change over time. For example,

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[30] White Paper 4 at 10.

[31] *See* Design History of HCPM, located on the FCC web site at http://www.fcc.gov/wcb/tapd/hcpm/ under section HCPM 2.6 Files Available for Downloading, documentation.zip, History.doc.

[32] *See generally* Rural Task Force Report.

1. the underlying census block and household data that form the basis for estimating customers and household counts was based on 1990 census data updated to the mid-1990s, data that is now approaching ten years old;

2. the underlying road network information that is used to estimate customer locations is similarly nearly ten years old;

3. the penetration of wireless service for use as an alternative voice communications device and as a substitute for landline service has increased substantially, outdating assumptions regarding traffic usage and customer density on wireline networks; there is no consideration given in the model to the networking implications of traffic originating from or terminating to wireless carriers, particularly traffic terminating on an intraMTA basis;

4. networking changes reflecting changing host/remote and end office/tandem relationships would need to be updated;

5. company ownership and study area changes and consolidations have taken place, none of which are reflected in the model;

6. cost inputs are based on data and technology that is several years old and may not reflect current labor and material costs or technology;

7. regulatory changes such as the implementation of intraLATA presubscription, acceptance of virtual NXX in some jurisdictions, and local number portability are not reflected in trunking, tandem switching, and other interoffice network cost determinations; and

8. in view of the increase in competition from both facilities-based and wireless carriers in the years since the model was developed, and the rapidly developing increase in competition from Internet-based services and possibly from electric company competitors, the underlying assumption of a single-provider cost based network may also need to re-addressed.

USTA maintains that if it were possible to implement a reasonable forward-looking cost model that is applicable to rural companies, it would require a massive undertaking to update the model to reflect the cost differences between rural companies, as well as the cost differences of rural companies from non-rural companies, and to address the concerns raised by the Rural Task Force in its Report. It would also require a full update of model inputs to reflect changes since the model inputs were developed. Whether or not such an effort would result in a model that would give predictable and sufficient measures of universal service support could only be determined after such an undertaking is completed.

IV. The FCC Should Repeal, Or At A Minimum Revise, Its Rule Section 54.305.

The Commission asks the Joint Board to "consider whether, in the event [it] retain[s] two distinct mechanisms for rural and non-rural carriers, [it] should retain or further modify section 54.305 of the Commission's rules, which provides that carriers that acquire exchanges receive support for those exchanges based on the exchanges' pre-transfer level of support."[33] The Commission explains in its Referral Order its purpose in adopting section 54.305, stating that it "intended to discourage carriers from transferring exchanges merely to increase their share of high-cost support."[34] USTA maintains that prior to and since the adoption of this rule there has been no evidence that such transfers have occurred for the sole purpose of increasing high-cost support. Similarly, there is no evidence to suggest that such transfers will occur if the rule is repealed. Beyond the lack of evidence that such transfers have occurred or would occur, there are other important reasons to repeal this rule. As the Commission noted, under section 54.305,

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[33] Referral Order, ¶13.

[34] *Id.*, *citing Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776 (1997) (Universal Service First Report and Order).

also known as the "parent trap" rule, a carrier that acquires an exchange from an unaffiliated carrier may only receive the same level of universal support for the acquired exchange at the same per-line support level for which the exchange was eligible prior to the transfer.[35] USTA notes that in many cases an acquired exchange is not eligible for universal service support because it was served by a large carrier that also served a major metropolitan area, thus leaving the acquiring carrier with no universal service funds to provide network and service upgrades to customers of that exchange. The repeal of the "parent trap" rule is necessary to ensure that rural carriers will continue acquiring exchanges that may have been neglected and that they will have sufficient support to make appropriate investments. Accordingly, USTA urges the Joint Board to recommend repeal of the Commission's "parent trap" rule.

The Commission also asks the Joint Board to "consider whether the safety valve mechanism contained in section 54.305 provides sufficient incentives for investment in acquired exchanges."[36] If the Joint Board does not recommend repeal of the "parent trap" rule, USTA urges the Joint Board to recommend, at a minimum, that the Commission amend the safety valve mechanism in section 54.305 because it discourages an acquiring company from investing in an acquired exchange during the first year after acquisition. First, USTA recommends that safety valve support should not be capped as it is in section 54.305(e),[37] and similarly the entire Universal Service Fund should also not be capped. Second, the safety valve mechanism should be amended so that an acquiring company can receive support for investments made in the first year after acquisition of an exchange, thereby encouraging the acquiring company to begin

[35] *See* 47 C.F.R. §54.305(a).

[36] Referral Order, ¶13.

[37] *See* 47 U.S.C. §54.305(e).

making improvements to the network and services immediately.[38] This can be accomplished by a rule change that would define the index year expense adjustment as the selling carrier's expense adjustment at the time of the sale of the exchange, which would then allow support to be provided to the acquiring carrier in the first year after acquisition by comparing the acquiring carrier's expense adjustments made in that first year with the seller's index year expense adjustment. Thereafter, safety valve support would be provided based on subsequent adjustments that would be compared with the acquiring carrier's first year expense adjustment.

USTA has previously recommended that the Commission eliminate the "parent trap" rule or modify the safety valve mechanism in the 2002 Biennial Review and the 2004 Biennial Review proceedings.[39] The Commission has taken no action on these requests so USTA is now urging the Joint Board to make a strenuous recommendation that the Commission repeal the "parent trap" rule or amend the safety valve mechanism to ensure that all new investment made by the acquiring company during the first year after acquisition is recognized.

CONCLUSION

For the reasons states above, USTA urges the Joint Board to recommend that the Commission retain the current definition of a rural telephone company; that it refrain from consolidating multiple study areas owned by a carrier; that it retain the current system of

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[38] As currently written, section 54.305 discourages investment from being made by acquiring carriers in the first year after acquisition of an exchange because such investment cannot be recovered through universal service support.

[39] *See generally Biennial Review 2002*, Reply Comments of the Unites States Telecom Association, WC Docket No. 02-313, WT Docket No. 02-310 (filed Nov. 4, 2002) and *2004 Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, Reply Comments of the United States Telecom Association, WC Docket No. 04-179 (Aug. 11, 2004).

providing high-cost support to rural carriers based on embedded costs; and that it repeal its "parent trap" rule or, at least, modify the safety valve mechanism of that rule.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robin E. Tuttle, do certify that on October 15, 2004, the aforementioned Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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